IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4103 OF 1995

Pimpri Chinchwad Municipal
Corporation, Pimpri, .. Petitioners

Vs

Greaves Foseco Ltd.. .. Respondent.

Mr N.V.Walawalkar, for the petitioners
Respondent, though served, absent.

CORAM : D.B.BHOSALE,J.
DATE : 05.10.2006
ORAL JUDGMENT:

1. By this writ petition under Article 227 of the Constitution of India, the petitioners have impugned the order dated 5.1.1995, by which the application at Exhibit-34 in Municipal Appeal No.168 of 1990 filed by them, came to be dismissed. By that application, an issue of territorial jurisdiction of the court, before which the Municipal Appeal No.168 of 1990 was filed by the respondents, was raised. The Small Causes Court, after considering the definition of the "Judge" as defined by Section 2(29) of the Bombay Provincial Municipal Corporations Act,1949, (for short, "BPMC Act") and the definition of "city" under section 2(8) of the said Act, has dismissed the application filed by the petitioner-corporation.

2. Mr Walawalkar, learned counsel for the petitioners, at the outset, invited my attention to the order dated 16.8.2002 of this Court passed in the Civil Revision Application No.478 of 2003. In the said revision, an identical question fell for the consideration of the Learned Single Judge of this court (B.H.Marlapalle,J.). The Learned Single Judge held that insofar as the appeals under section 406 of BPMC Act are concerned, the Civil Judge, Senior Division, as defined by section 2(29) of BPMC Act has a jurisdiction to decide such appeals. The relevant observations in the order dated 16.8.2005 reads thus :

> "1. Heard Shri Walawalkar learned counsel for the petitioner Corporation. In Municipal Appa No.10/98 and other connected appeals, an application was filed at Exhibit-22 by the Corporation under Order VII Rule 11(d) of the Code of Civil Procedure contending that the appeals were not maintainable. This application came to be rejected by the learned Vth Joint Civil Judge, Sr.Division at Pune on 25th February, 2003. Misc.Civil Application No.267 of 2003 praying for review of the order passed on 25th February, 2003 also came to be rejected on 17th June 2003 and hence, this Revision Application.
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> 2. It was contended that the appeal filed u/s.406. of the Bombay Provincial Municipal Corporation Act, 1949 was required to be entertained and decided by the Small Causes Court having jurisdiction for the Pune city and in any case u/s.5 of the Provincial Small Causes Court Act, 1887, the Court of Small Causes at Pune has the jurisdiction of the entire Haveli taluka in view of the notification issued on 3rd December,

> 1919 by the Governor in Council. There is no dispute that the petitioner Corporation is a distinct legal entity under the Bombay Provincial Municipal Corporation Act 1949 and is not a part and/or department of the Pune Municipal Corporation and therefore, the petitioner Corporation could not rely upon the provisions of section 2(29) of the said Act. The Bombay Provincial Municipal Corporation Act 1949 is a special statute providing for remedies by way of an appeal against the rateable value fixed by the Municipal Corporation and therefore, the notification dated 15th December, 1919 could not be made applicable. This reasoning set out by the lower appellate court cannot be termed as illegal or erroneous so as to call for interference u/s.115 of the Code of Civil Procedure."

3. In that petition, the Corporation took diametrically opposite stand than what has been taken in the present writ petition. In that writ petition, it was contended that the appeal filed under section 406 of the BPMC Act was required to be entertained and decided by the Small Causes Court having jurisdiction for the Pune City and in any case under section 5 of the Provincial Small Causes Court Act, 1887, the Court of Small Causes at Pune has the jurisdiction of the entire Haveli taluka in view of the notification issued on 3rd December, 1919 by the Governor in Council.

4. In the present case, the appeals were filed before the Small Causes Court Pune and in view thereof the Corporation raised an objection stating that

Pimpri-Chinchwad Municipal Corporation is a different corporation and is for a different city. The entire establishment is different and since there is no Small Causes Court available in Pimpri-Chinchwad, Municipal appeals have to be filed in the Court of the Civil Judge, Senior Division at Pune. This contention was negatived by the Small Causes Court mainly relying upon the provisions contained in Section 16 of the Provincial Small Causes Court Act. The relevant observations in the impugned order read thus :

> Now, the B.P.M.C. Act is any other enactment and in that "Judge" is defined to mean "Judge of the Small Causes Court and when there is no Small Cause Court, then Civil Judge S.D.". Therefore, there is exclusive jurisdiction of Court of Small Cause at least in Pune City and if a person from Pimpri Chinchwad has to come to Pune, then he has to file Municipal Appeal in Small Cause Court and not in the Court of Civil Judge, S.D. Thus, I found no substance in the application."

The view taken by the Small Causes Court cannot be sustained in the face of the order passed by this Court dated 16.8.2005 in civil revision application no.478 of 2003. I am in agreement with the view taken by Marllapale,J. Mr Walawalkar, learned senior counsel for the petitioner-corporation, also fairly stated that the view taken by Marlapalle,J. is correct view and, therefore, he placed heavy reliance upon the said order.

It is clear from the said order, as also from the definition of the "Judge" and the definition of "City" under sections 2(29) and 2(8) of BPMC Act respectively Pimpri-Chinchwad is a different city as defined by section 2(8). The Civil Judge, Sr Dn, having territorial jurisdiction over the Haveli taluka only will have a jurisdiction to hear appeals under section 406 of the BPMC Act. In the circumstances, this writ petition is allowed. The order dated 5.1.1995 is quashed and set aside. The Small Causes Court, Pune shall pass appropriate orders allowing the appellants to file appeals before appropriate court.

(D.B.BHOSALE,J.)